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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,305	04/19/2004	Bi-Chih Liao	BHT-3092-428	9827

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BRUCE H. TROXELL  
SUITE 1404  
5205 LEESBURG PIKE  
FALLS CHURCH, VA 22041

EXAMINER
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SALDANO, LISA M

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/826,305

**Applicant(s)**

LIAO, BI-CHIH

**Examiner**

Lisa M. Saldano

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 13 is objected to because of the following informalities:

Regarding claim 13, the applicant recites “the external latch device is one of a zipper and an adhesive tape.” This is not the proper form for a Markush claim. The examiner suggests that the applicant state *the external latch device is selected from a group consisting of a zipper and an adhesive tape*.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

More specifically, the applicant recites limitations wherein “the internal pocket opening is sewn closed.” It is not clear how the invention can have an opening that is sewn closed. This appears to be a contradiction, particularly since this claimed invention is an apparatus rather than a method or process. Please correct and clarify this limitation. A prior art rejection for this claim has not been provided as it is not clear what the applicant intended to claim.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10, 11, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pistay (5,344,437) in view of O'Leary (1,617,822) and Phillips et al (2,943,621).

Pistay discloses a massaging therapeutic pillow 10 with a removable vibrating massage assembly 40 (see Figs. 1-5 and column 4, lines 40-60). Pistay discloses an external pocket 30 having an opening with a latch device 15 disposed at the opening defining a pocket chamber. Pistay further discloses an internal pocket 42 having an opening combined with the opening of the external pocket (see Fig.3). The internal pocket 42 defines a pipe chamber that accommodates a vibrator 44. Soft filler foam material 54 is passed through the opening of cavity 42 filling the internal pocket chamber 42 of vibrating massage assembly 40. The pocket opening is sealed to constitute a massage pillow. Pistay further disclose that the entire vibration massaging assembly 40 can be removed from cavity 42 for easy replacement or batteries 52. Pistay discloses that the vibrator 44 comprises a small motor and an on-off switch that drives an eccentric weight by direct current provided by two one and one-half volt batteries (see column 4, lines 40-50).

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Regarding claim 11, Pistay discloses that the pillow 10 is made from cloth material 15 (see column 3, lines 60-70). The cloth material disclosed does not preclude the use of woven cloth material.

Regarding claims 13 and 16, Pistay discloses a zipper 46 that closes an opening of the pillow (see column 4, lines 57-60).

However, Pistay fails to disclose that the internal pocket comprises an internal pocket opening located in a peripheral wall of the internal pocket. Pistay also fails to explicitly disclose that the internal pocket is movable into and out of the external pocket.

O'Leary discloses a sleeping pillow comprising an external pocket 6, internal bag or pocket 11 and filler. O'Leary's internal pocket 11 is movable into and out of the external pocket (see Figs.1-4 and see lines 70-91). The internal pocket 11 is capable of housing padding and various medicinal preparations for assisting the cure of various ailments. The external pocket 6 and internal bag 11 are made from porous material.

Regarding claim 15, O'Leary discloses snap fasteners 13, 14 that function as latch devices to open and close the internal bag.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pistay to comprise the internal bag or pocket, as taught by O'Leary, for housing a therapeutic device, such as Pistay's vibrating apparatus. Pistay provides sufficient motivation for using the movable bag because Pistay clearly states that the entire vibration massaging assembly 40 can be removed from the cavity for easy replacement of batteries.

Phillips et al disclose a vibrating pillow 10 comprising an envelope 11 wherein filling material is placed (see Figs.1&2). Phillips et al disclose a pocket opening 19 disposed on an

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appropriate end for blowing soft material into the envelope. Phillips et al further disclose that the opening 19 is then closed by stitching or the like to complete the vibrating cushion assembly.

Phillips et al further disclose that the outer envelopes may be formed from fabric.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the vibration massaging assembly of Pistay to incorporate the openings disposed on an appropriate end, as taught by Phillips et al because both inventions are directed to providing a vibrating pillow assembly. It would be obvious to provide an opening in an end or a side or wherever one desired to dispose filler material into the pillow. The placement of the opening is a matter of design choice. Furthermore, placement of the filler opening on a side of the pillow assembly allows one to fill the pillow in a location that does not conflict with the location of the vibrating mechanisms and other hardware.

Furthermore, regarding claim 11, it would have been obvious to one of ordinary skill in the art at the time of the invention to use either reference of the pocket material to be woven cloth because the above references disclose fabric, material and cloth, which does not preclude woven cloth, which is commonly used in bedding inventions such as pillows.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pistay, O'Leary and Phillips et al, as applied to claim 10 above, and further in view of Wang (US2002/0096097).

Pistay, O'Leary and Phillips et al disclose features that are described above.

However, Pistay, O'Leary and Phillips et al fail to disclose that the fill material for the pillow comprises a polyton, which is a plastic polymer material.

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Wang discloses three-dimensional embroidery comprising filling material 20 added into fabric 10. The fill material is a piece of polyton (see page 1, paragraph [0019]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the filling material of the Pistay pillow to comprise polyton material, as taught by Wang, because the selected filler material is a matter of design choice. A polyton filler material is a functional equivalent filling material for the Pistay pillow.

### *Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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